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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/687,897 | 10/17/2003 | Antonella Pesce | CM2512C | 9804 |

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| EXAMINER | |
|---|---|
| BETTON, TIMOTHY E | |
| ART UNIT | PAPER NUMBER |
| 1617 | |
| MAIL DATE | DELIVERY MODE |
| 04/30/2008 | PAPER |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

| Office Action Summary | Application No. | Applicant(s) | |
|---|---|---|---|
| | 10/687,897 | PESCE ET AL. | |
| | Examiner | Art Unit | |
| | TIMOTHY E. BETTON | 1617 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ____ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☐ Claim(s) _____ is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☐ Claim(s) _____ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

## DETAILED ACTION

### *Election of Species*

The Examiner has required, under 35 U.S.C. § 121, election of a specific ketal moiety from the list in claim 2. As stipulated by the Restriction Requirement, Claim 2 is drawn to a specific exact ketal moiety. This election is made without traverse. Support for the ketal moiety elected can be found, for example, on page 15, line 23.

### *Claim Rejections - 35 USC § 103*

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 2 and 5 (in part as far as disclosure in reference of an article suitable to be worn in contact with a mammal body) and 11, 12, 14 and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wang et al. (USPN 4,713,068), Scapin et al.(Use of triethylcitrate plasticizer in the production of poly-L-lactic acid implants with different degradation times, Journal of materials science, 2003, vol. 14 no. 7, pp. 635-640 [6 pages(s) article)], Alikhan (USPN 5370764), and ( Elder et al. (USPN 6,107, 537), in view of Nitikhunkasem et al. (USPN 6,048,549).

Wang et al. teach a breathable cloth-like barrier which includes a defensive composite having at least two layers (see abstract).

Wang et al. teach sanitary napkins (column 1 , line 41). The instant claim 2 discloses feminine napkins. Accordingly, the disclosure of instant claims 14, 18, and 19 particularly are not further limiting based on variable weave constructions and designs of such articles well-known in the pertinent art.

Wang et al. teach the optimization of the basis weight of an article is supported by art-known optimization in relation to sizes and uniformity of the pores at the surface of each side of the first layer in part [as being] a function of the thickness of the layer. As a general rule, the pore size limitation is difficult to meet if the basis weight of the first layer is not at least about 10g/m2 (column 10, lines 31-41).

Wang et al. teach articles comprised of plasticizers. Triethylcitrate is defined as a well-known plasticizer in the pertinent art (Scapin et al. (Use of triethylcitrate plasticizer

in the production of poly-L-lactic acid implants with different degradation times, Journal of materials science, 2003, vol. 14 no. 7, pp. 635-640 [6 pages(s) article), please see abstract only] (column 15, line 6).

Wang et al. teach additives to be incorporated into the PVOH film (see column 13, lines 14-26). Wang et al. teach deodorant additive (column 15, line 62).

Wang et al. teach an **apertured**, macroscopically expanded, **three-dimensional polymeric web exhibiting breathability and resistance to fluid transmission**. The web is reported to have particular utility as a breathable barrier for a disposable diaper. The web preferably comprises a deeply drawn three-dimensional structure containing a multiplicity of debossments of macroscopic cross-section (i.e., visibly perceivable by the normal human eye at a perpendicular distance of about one foot), each of said debossments originating as an aperture in a **first surface of the web** and having a continuously interconnected side wall extending in the direction of a second, remotely located parallel surface of the web. The side wall of each debossment terminates to form an end wall in the second surface of the web. The end wall includes a multiplicity of apertures, each of said apertures being sized and shaped to independently support an aqueous fluid meniscus. **These smaller apertures in each end wall are so spaced relative to all adjacent apertures in the end wall that the aqueous fluid menisci supported in the apertures do not contact one another** (column 3, lines 6-27).

Wang et al. does not teach a second layer comprising a fibrous layer.

However, Alikhan resolves the deficiency in Wang et al. by teaching embodiments replete with disclosures directed to variable fibrous non-woven web made from synthetic fibers (please see column 1, lines 1-63).

Wang et al. does not teach the cooling agent, menthone glycerol ketal or the agent in an emollient-containing composition according to instant claim 7.

Wang et al. teach the first layer as having an average fiber diameter in the range from about 0.01 to about 10 microns.

However, Elder teach embodiments drawn to emollients and the amount of emollient that can be included in the composition will depend on a variety of factors, including the particular emollient involved, the lotion-like benefits desired, the other components in the composition and like factors. The composition will comprise from 0 to about 100%, by total weight, of the emollient. Preferably, the composition will comprise from about 10 to about 95%, more preferably from about 20 to about 80%, and most preferably from about 40 to about 75%, by weight (column 21, lines 12-21).

Elder et al. teach compositions designed to provide a therapeutic and/or skin protective benefit; a useful active ingredient in these compositions is one or more emollients (column 18, lines 58-67).

Elder et al. teach propylene glycol that may be incorporated into the composition (column 21, line 10). Elder et al. also teach embodiments drawn to glycerin and glycerin derivatives, acetoglycerides, and trimethylene glycol.

Elder et al. does not teach menthone glycerol ketal (Frescolat MGA).

However, Nitikhunkasem et al. the cooling agent Frescolat ML , which would be readily interchangeable with Frescolat MGA of the claimed invention (column 2, line 56).

The scope and content of the prior art is drawn to sanitary/ feminine napkins which are designed to inhibit over-hydration (moisture) and objectionable odor. Prior art is replete with embodiments drawn to the effort of achieving increased comfort, dryness, and the perception of freshness in the use of sanitary napkins/ feminine pads. In view of the teachings of prior art, the claimed invention is made obvious based on similar subject matter and inventive objective.

The difference of the prior art in view of the instant claims is directed to the use of Frescolat MGA in the instant claims as a cooling agent in a emollient-containing composition impregnated into a sanitary napkin for partial contact with the vaginal and vaginal mucosal region to provide comfort and the perception of freshness.

The prior art provides the motivation via the Wang et al. reference by teaching the additive of a deodorant which would be apparent to one of skill to adequately encompass the purpose of the incorporation of a cooling agent. Instant claim 2 discloses a *mint* - odor free cooling agent. The one of skill would instantly be inclined to recognize the further distinction of a cooling agent as described as a *mint-odor free* article. Thus, a mint-odor free article would instantly constitute an article containing a deodorizer. The instant claim further limits a cooling agent by distinguishing this cooling agent as a deodorizer.

Accordingly, the objective evidence contained in the application in view of obviousness is based further on the necessity in the prior art to improve upon the function

and use of sanitary napkins in the way of comfort, dryness, and deodorization for freshness. Instant claim 2 discloses the limitation of without the need of modifying body surface temperature. The increased temperature of certain body surfaces will result in mal-odor and over-hydration. The obviousness in the objective evidence is that a cooling agent is represented as consisting of a mint- odor free component. This mint-odor free component of a cooling agent constitutes deodorization.

Thus, it would have been *prima facie* obvious to the one of skill at the time of invention to at once recognize with a reasonable expectation of success of the incorporating the teachings of Wang et al., principally with the teachings and modifications of Nitikhunkasem et al.

As explained above, the motivation to incorporate these references together is based on the disclosure of Wang et al. which teaches the embodiment of a deodorant incorporated as an additive in the absorbent article. Alikhan provides the motivation to combine with Wang et al. by teaching a specific embodiment drawn to a second layer of an absorbent article which is comprised of a fibrous non-woven layer. Elder et al. provides further motivation and what is termed as *pharmaceutical elegance* by teaching an emollient which incorporates identical constituents as disclosed in instant claim 8. Elder et al. also disclose agents, which are similar to cooling agent derivatives and Elder et al. teach the emollient propylene glycol (PEG) which is well-known agent comprised in various emollients.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy E. Betton whose telephone number is (571) 272-9922. The examiner can normally be reached on Monday-Friday 8:30a - 5:00p. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on (571) 272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Shengjun Wang/
Primary Examiner, Art Unit 1617

TEB